

IN THE HIGH COURT OF DELHI AT NEW DELHI

Order Reserved on: 19.09.2006
Date of Decision: November 06, 2006

WP(C) No.15794/2004

Delhi Transport Corporation

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..... Petitioner

Through: Ms. Gita Sharma and Mr. Ataul Haque Advocates

versus

\$ Jaipal Singh

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..... Respondent

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Through: Mr. Anil Mittal, Advocate

CORAM:

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Yes.

Yes.

Yes.

: **SHIV NARAYAN DHINGRA, J**

1. By this writ petition, the petitioner has challenged the validity of award dated 19.1.2004 whereby the Labour Court held that the domestic inquiry conducted against the workman was violative of principles of natural justice and directed the reinstatement of the workman with full back wages.
2. Briefly, the facts are that the respondent No.1 was working as a conductor and was on duty on bus No. 9011 from Talwara to Delhi on 22.3.1990. At about 7.20 am, the bus was checked at Mukeria Pur by the checking staff. Three persons were caught alighting from the bus without tickets. They stated that they had paid Rs.2/- each to the respondent who did not issue the tickets. Further checking of bus revealed that nine passengers who were traveling from Talwara to Delhi had paid Rs.61 each to the respondent, who did not issue tickets. Two passengers were traveling from Talwara to Dasua and had paid Rs.4.70 to the respondent, but were not given tickets. One passenger had boarded the bus from Hajipur to Hayana and paid Rs.7/- and was not issued ticket. One passenger had boarded the bus from Talwara to Hoshiarpur and paid Rs.11/-

WP(C) No.15794/2004

Page No.1 of Page No.11

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26

and was not issued ticket by the respondent. There were two passengers who were traveling from Hajipur to Hoshiarpur and paid Rs.9 each to the respondent and were not given tickets. Unpunched tickets of all the above denomination were taken from the respondent and were attached to challan. The way bill of the respondent was found empty. It is alleged that the respondent did not allow the statements of passengers to be recorded and rather incited the passengers against the checking staff. He did not hand over the complaint book to the checking staff for making entry into it of the results of checking. However, he later on asked some of the passengers to write their statements in the complaint book. On 23.3.1990, the respondent wrote a letter to Depot Manager about the checking and stated that his bus was not completed when it was checked as he was on Talwara duty for the first time. The fare table was big and the tickets were blank. There were more passengers in the bus. The checking staff wrongly challaned him. On the basis of report of checking staff, a chargesheet dated 18.4.1990 was issued to the respondent. The respondent denied the charges. An inquiry was got conducted by the petitioner into the charges. The inquiry officer submitted its report on 30.7.1990 holding the respondent guilty of charges levelled against him. A show cause notice was issued to the respondent as to why he be not removed from service from Corporation vide letter dated 29.11.1990. Considering the reply of the respondent and considering his past record, the respondent was removed from service.

3. The past record of the respondent showed that he collected Rs.49/- instead of Rs.47.50 from the passenger from Delhi to Amritsar on 1.1.1989. He was placed under suspension. On 13.4.1989, on checking, it was found that he had issued unpunched tickets to the passengers. He was given penalty of stopping of two increments. On next checking, i.e. 2.1.1989, four passengers were caught without tickets alighting from bus when he was on duty and he was put under suspension on 12.9.1989. On 18.10.89, as a penalty, his basic pay was reduced to the initial stage

27

of pay scale. The present incidence was another in the series. He was dismissed from service after enquiry on 21.11.1990. He did not raise any dispute for four and a half years about his removal and after four and half years, he raised an industrial dispute which was referred to the Labour Court in following terms:

"Whether the services of Sh. Jai Pal Singh have been terminated illegally and/or unjustifiably and if so, to what relief is he entitled and what directions are necessary in this regard?"

4. The Tribunal, after recording evidence of both sides came to conclusion that Shri. B. Trivedi, Inquiry Officer, was not appointed as Inquiry Officer by Depot Manager but was appointed by General Manager. This showed that the appointment of Inquiry Officer was not proper. The Tribunal also observed that the enquiry officer acted, both as a judge as well as prosecutor and cross examined the witnesses. If a witness had been cross examined by an inquiry officer himself, it was contrary to principles of natural justice. The enquiry officer could not have acted both, as a judge and as a prosecutor, being contrary to the principles of natural justice. The Tribunal observed that the statements of the passengers were recorded by the inquiry officer but the same were not taken into consideration. The Enquiry Officer twisted the statements of passengers in inquiry report. The Labour Court further observed that the workman was not provided list of witnesses or documents along with chagesheet. The procedure adopted by the inquiry officer was against the principles of natural justice. After holding, as above, the Labour Court came to conclusion that the inquiry proceedings were contrary to the principles of natural justice. The management had sought no opportunity to adduce evidence before the Tribunal to prove the charges, so no opportunity was given. He held that removal of the workman was illegal.

5. The award has been challenged by the petitioner on the ground that the Labour Court exceeded the scope of its jurisdiction and by a mistaken view, arrogated to itself the functions of an appellate authority. The Labour Court was to see whether a prima facie case was made out by the

78

employer against the respondent or not and the action against the respondent had not been taken by way of victimization or as an unfair labour practice or there was any mala fide on the part of the management. The Labour Court also failed to appreciate that the charge sheet against the respondent was in respect of the passengers who had alighted from the bus and and stated to the checking staff that they paid the fare to the respondent who failed to issue ticket.

6. The finding of the Labour Court that the inquiry was not conducted in accordance with the principles of natural justice was assailed. The petitioner submitted that there was no scope for holding so by the Labour Court. The inquiry was conducted totally in compliance with the principles of natural justice. Neither the appointment of the Enquiry Officer was improper. The General Manager, who appointed the inquiry officer was higher in rank than the Depot Manager and was entitled to appoint an inquiry officer. The Labour Court also wrongly held that the statement of passengers was not considered or the twisted. In fact, the Inquiry Officer has considered the statements of all the passengers who had appeared and deposed. The award was also assailed on the ground that full back wages should not have been allowed by the Labour Court in view of the various judgments of Supreme Court. The Industrial dispute was raised after four and a half years of the termination, it was no industrial dispute as it had already become stale dispute. In any case, the full back wages for the entire period could not have been granted.

7. A perusal of the duty charter/conductor guidelines is the record of the petitioner, would show that a conductor has to perform the following duties:

"2. He should use proper correct destination plates; in his bus and before starting from the exit point, complete this work.

3. It is the main duty that he charge fare from passengers and issue tickets against the same and the conductor is given service to mainly perform this job. While discharging this duty, he should fully take care of this so that the passenger or management may not raise an accused finger at him.

4. He should distribute/issue tickets as per seriatim or serial wise from the ticket blocks as stated in the route sheet.

5. After the passenger boarded the bus, the conductor should know/enquire from the passenger his destination spot and tell him the prescribed rate. After charging the fare, he after punching the ticket properly as per down or up direction issue the said ticket to the passenger; before issuing ticket to another passenger, the conductor should ensure that the balance if any has been returned to the earlier passenger.

11. If there are two doors in the bus, the work of issue of tickets should be done from the exit door otherwise from the entry door and at any bus stop, any passenger should be allowed to get down only when it is ensured that he has purchased the ticket.

12. Ticket used once in the journey cannot be re-used. Therefore, he should never sell the used ticket again and no used ticket should be kept with him.

13. If any passenger refused to pay the prescribed fare, the conductor should immediately make that passenger to get down at the immediate first stop. If situation is such that the passenger refused to pay fare and to get down from the bus, the conductor should seek the assistance of checking staff present in the line or police. Besides this, he should sent a report to the Traffic Suptdt. regarding that incident containing the name and address of the such passenger and of witnesses, if any.

14. If conductor commits any error, he should immediately inform his error to any member of the checking staff present at the spot and seek his advice."

8. It is apparent from guideline 11 that the conductor had to start giving tickets from exit door so that no passenger gets down without ticket, nor the conductor should allow anyone to get down without ticket. The plea that conductor was new on the route, thus had no force.

9. It is undisputed that General Manager is superior authority than the Depot Manager in DTC. In this case, the appointment of Inquiry Officer, was admittedly made by General Manager and not by Depot Manager. It has not been stated by the Labour Court how appointment of the inquiry officer by a superior authority than the appointing authority was illegal or improper. There is no rule which provides that Enquiry Officer cannot be appointed by a superior authority and only the appointing authority can appoint the inquiry officer. Obviously, the Tribunal was under some misconception and held that the appointment of inquiry officer was not proper and illegal. The Tribunal's finding is thus perverse. Similarly, the Tribunal's observation that inquiry officer

acted both as a prosecutor and as a judge are without any basis. A domestic inquiry is not required to be held in an adversarial manner. A domestic inquiry is in the nature of investigation and not in the nature of adjudication. An inquiry officer has every right to ask questions to the witnesses in order to get clear and whole picture of the incident and asking questions does not amount to cross examination. Even if it amounts to cross examination, it is not illegal. Even a trial judge has a right and obligation to ask such questions to the witness as he considers necessary to bring out the truth. Asking a question, does not convert a judge into a prosecutor. Neither asking of questions to witnesses converts an Enquiry Officer into a prosecutor. There is no requirement of law that in an enquiry there should be a presenting officer. An inquiry can be conducted by an enquiry officer without the help of a presenting officer. A privilege is given to the delinquent employee to appoint his defence assistance because it is considered that the delinquent may not be in a proper state of mind to ask questions to the witnesses of the management or to present his case properly. But a delinquent can always refuse to take help of defence assistance and conduct the case himself. Similarly, management witnesses can depose before the inquiry officer of their own without the help of any presenting officer. An inquiry officer can always ask all relevant questions to the witnesses of both sides in order to know the truth. The Tribunal wrongly concluded that asking of questions by the inquiry officer was contrary to the principles of natural justice. It is now settled law that principles of natural justice cannot be put into a straitjacket formulae. In each case, where it is alleged that there was violation of principles of natural justice, the employee has to show as to how such alleged violation prejudiced his defence. There is no allegations made in this case that any prejudice was caused to the respondent. In 1987 (Supp) SCC 518 *Chandrama Tewari vs. Union of India(Through General Manager, Eastern Railways)*, Supreme Court held:

" We have given our anxious consideration to the submissions made on

behalf of the appellant and we have further considered the aforesaid authorities referred to by the learned counsel for the appellant but we do not find any merit in the appellant's submissions to justify interference with the High Court's judgment. Article 311 of the Constitution requires that reasonable opportunity of defence must be afforded to a government servant before he is awarded major punishment of dismissal. It further contemplates that disciplinary enquiry must be held in accordance with the rules in a just and fair manner. The procedure at the enquiry must be consistent with the principles of natural justice. Principles of natural justice require that the copy of the document if any relied upon against the party charged should be given to him and he should be afforded opportunity to cross examine the witnesses and to produce his own witnesses in his defence. If findings are recorded against the government servant placing reliance on a document which may not have been disclosed to him or the copy whereof may not have been supplied to him during the enquiry when demanded, that would contravene principles of natural justice rendering the enquiry, and the consequential order of punishment illegal and void. These principles are well settled by a catena of decisions of this Court. We need not refer to them. However, it is not necessary that each and every document must be supplied to the delinquent government servant facing the charges, instead only material and relevant documents are necessary to be supplied to him. If a document even though mentioned in the memo of charges is not relevant to the charges or if it is not referred to or relied upon by the enquiry officer or the punishing authority in holding the charges proved against the government servant, no exception can be taken to the validity of the proceedings or the orders. If the document is not used against the party charged the ground of violation of principles of natural justice cannot successfully be raised. The violation of principles of natural justice arises only when a document, copy of which may not have been supplied to the party charged when demanded is used in recording finding of guilt against him. On a careful consideration of the authorities cited on behalf of the appellant, we find that the obligation to supply copies of a document is confined only to material and relevant documents and the enquiry would be vitiated only if the non supply of material and relevant documents when demanded may have caused prejudice to the delinquent officer." (para 4)

10. A perusal of inquiry report would show that the inquiry officer had taken into account the statements of all the passengers and had come to conclusion that the charges were made out against the respondent despite statements of some of the passengers being not supportive of the case of the management. It is settled law that in an inquiry, strict principles of the Evidence Act

32✓

are not applicable. An inquiry officer take into account all materials which is available on record including here-say evidence. In *State of Haryana v. Rattan Singh*, (1977) 2 SCC 491 Supreme Court held as under :

"It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passengers from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence-not in the sense of the technical rules evidence or was there no evidence-not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground."(para 4)

11. Even taking into account the passengers' statement, it is evident that the conductor had not issued tickets to the passengers at one or the other plea. The plea taken by conductor was that he would first issue tickets to the short distance passengers and then he would issue tickets to long distance passengers. But even the passengers traveling short distance were found getting

down the bus without tickets. As per his duty chart, the conductor was supposed to start issue tickets from the exit door, leaving no passenger without ticket. His refusal to give tickets to the passengers on one or other plea, showed his mala fide intention. No infirmity can be found with the inquiry officer's conclusion that the conductor had deliberately not issued tickets. I find that the Tribunal went wrong in finding fault with the Inquiry Officer.

12. The award is liable to be set aside on the ground that the Tribunal did not give opportunity to management to prove misconduct by adducing evidence. The Tribunal was to decide a reference under Section 10 of the Industrial Disputes Act. It was not an application under Section 33(2)(b) of the Act before the Tribunal. In an adjudication of a reference made under Section 10 of the I.D. Act, it was obligatory on the Tribunal to ask both parties to adduce evidence. The Tribunal could not have refused to give opportunity to management from adducing evidence on the ground that it did not ask for one. It is only when an application under Section 33 (2)(b) of the I.D. Act is made and the Tribunal holds that the enquiry was vitiated that the management is supposed to ask for an opportunity to lead evidence to prove misconduct before the Tribunal.

13. The Tribunal in this case has awarded full back wages despite the fact that the petitioner had raised industrial dispute after four and a half years of his termination. In *Allahabad Jal Sansthan v.*

Daya Shankar Rai and another 2005 SCC(L&S) 631, Supreme Court held:

"In law in absolute terms cannot be laid down as to in which cases, and under what circumstances, full back wages can be granted or denied. The Labour Court and/or Industrial Tribunal before which industrial dispute has been raised, would be entitled to grant the relief having regard to the facts and circumstances of each case. For the said purpose, several factors are required to be taken into consideration. It is not in dispute that Respondent 1 herein was appointed on a ad hoc basis; his services were terminated on the ground of a policy decision, as far back as on 24.1.1987. Respondent 1 had filed a written statement wherein he had not raised any

plea that he had been sitting idle or had not obtained any other employment in the interregnum. The learned counsel for the appellant, in our opinion, is correct in submitting that a pleading to that effect in the written statement by the workman was necessary. Not only no such pleading was raised, even in this evidence, the workman did not say that he continued to remain unemployed. In the instant case, the respondent herein had been reinstated from 27.2.2001. (para 6)

In *Tapan Kumar Bhattacharya* (2002) 6 SCC 41 this Court noticed that there was no pleading or evidence as to whether the respondent therein was employed elsewhere during the long interregnum and in the fact situation obtaining therein, the appellant was directed to pay 50% of the back wages till the date of reinstatement. (Para 7)

Yet again in *Jarina Bee* (2003) 6 SCC 141 this Court observed that the award of full back wages was not the natural consequence of an order of reinstatement. (para 8)

In *Rahmat Ullah* (2003) 10 SCC 92, a Bench of this Court held that as the respondent therein was out of service since 1990 as an ordinary worker, he must have been working elsewhere to earn his livelihood; and there was no material to show that he was not gainfully employed, direction to pay 50% of the back wages was made. (para 9)

In *Ram Ashrey Singh v Ram Bux Singh* (2003) 9 SCC 154, questioning the order of termination after six years was considered to be one of the factors for denying an order of reinstatement with back wages to the workman. In the fact situation obtaining therein, it was held that ends of justice would be subserved if the appellants therein were directed to pay a sum of Rs.35,000/- by way of compensation in addition to what has already been paid(See also *Sonepat Coop. Sugar Mills Ltd. v. Ajit Singh* (2005) 3 SCC 232). (para 10)

In *Indian Rly. Construction Co. Ltd.* (2003) 4 SCC 602 this Court merely stated:(SCC pp.593-94, para 30).

"30. Question then would be how the conflicting interests can be best balanced. By an interim order dated 5.5.2000 the appellant was directed to reinstate the respondent subject to an interim payment of Rs.,3 lakhs towards the back wages. Directions for reinstatement does not automatically entitle an employee to full back wages. In *Hindustan Tin Works(P) Ltd. Vs. Employees* (1979) 2 SCC 80 a three-Judge Bench of this Court laid down:(SCC p.86, para 11)

'11. In the very nature of things there cannot be a straitjacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and

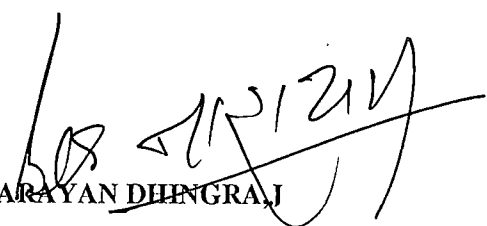
35

*the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the rules of reason and justice, according to law and not humour. It is not to be arbitrary, vague and fanciful but legal and regular(see *Susannah Sharp v. Wakefield* 1891 AC 173, AC at p. 179) (para 14)*

In Nicks(India) Tools (2004) 8 SCC 222 this Court again in the fact situation obtaining therein refused to interfere with the discretionary jurisdiction exercised by the High Court particularly having regard to the fact that it was for the first time before the writ court, such plea was raised by way of additional evidence, which had been rejected. (para 15)

We have referred to certain decisions of this Court to highlight that earlier in the event of an order of dismissal being set aside, reinstatement with full back wages was the usual result. But now with the passage of time, it has come to be realized that industry is being compelled to pay the workman for a period during which he apparently contributed little or nothing at all, for a period that was spent unproductively, while the workman is being compelled to go back to a situation which prevailed many years ago when he was dismissed. It is necessary for us to develop a pragmatic approach to problems dogging industrial relations. However, no just solution can be offered but golden mean may be arrived at. (para 16)

14. For the reasons stated above, I hereby set aside the award passed by the Tribunal. The writ petition is allowed. No orders as to costs.


SHIV NARAYAN DHINGRA

November 06, 2006,
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Disposed of 6/11/06
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on 06/11/06